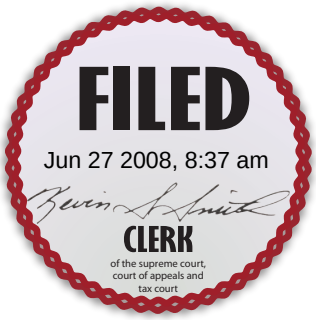

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IN THE COURT OF APPEALS OF INDIANA

GARY W. LINDSEY,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 65A01-0712-CR-588
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE POSEY CIRCUIT COURT
The Honorable James M. Redwine, Judge
Cause No. 65C01-0705-FB-53

June 27, 2008

MEMORANDUM DECISION – NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-defendant Gary W. Lindsey appeals his conviction for Dealing in Methamphetamine,[1] a class B felony, and Neglect of a Dependent,[2] a class D felony. Specifically, Lindsey contends that the trial court erred by admitting certain evidence over his hearsay objection. Finding no reversible error, we affirm the judgment of the trial court.

FACTS

On May 1, 2007, Posey County Deputy Sheriff Thomas Latham and other law enforcement officers went to Lindsey's residence pursuant to an Indiana State Police report of a possible methamphetamine lab. The officers noticed Lindsey and another male walking out of a trailer located on Lindsey's property. The officers also observed Lindsey's two daughters, ages six and eight, on the property. Lindsey consented to a search of his property, including the trailer.

During the search, Deputy Latham observed clear liquid in numerous glass jars. Deputy Latham asked Lindsey if there was anything harmful in the jars and Lindsey stated that lithium was "soaking out" in the jars. Tr. p. 25. Deputy Latham called the Indiana State Police methamphetamine lab team because the combination of water and lithium within the jars could have been explosive. Lithium is commonly placed in water in order to achieve maximum reaction during the methamphetamine manufacturing process. Id.

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[1] Ind. Code § 35-48-4-1.1.

[2] I.C. § 35-46-1-4(a)(1).

Indiana State Police Trooper Doug Humphrey, a member of the clandestine methamphetamine team, arrived at the trailer and found numerous items that are used in the methamphetamine manufacturing process. It was determined that Lindsey's trailer contained an active methamphetamine lab.

On May 2, 2007, the State charged Lindsey with class B felony dealing in methamphetamine and on May 3, 2007, the State amended the information to add class D felony neglect of a dependent. On October 4, 2007, a jury trial began. During the trial, the State presented evidence including Lindsey's fingerprints on the methamphetamine production equipment and numerous photographs of the trailer. State also submitted Exhibit 19, which was a picture of a plastic bottle with a handwritten label that read "muratic acid." Appellant's App. p. 113. Lindsey objected, arguing that the picture was hearsay. The trial court overruled the objection and admitted it into evidence. On October 5, 2007, the jury returned a verdict of guilty for both charges against Lindsey.

On November 5, 2007, following a sentencing hearing, Lindsey was sentenced to six years of incarceration for dealing in methamphetamine and one and one-half years of incarceration for neglect of a dependent. The sentencing judged ordered that the sentences be served concurrently, with two years executed and four years suspended. Lindsey now appeals.

DISCUSSION AND DECISION

We review decisions of the trial court to admit evidence for an abuse of discretion. McCarthy v. State, 749 N.E.2d 528, 536 (Ind. 2001). The trial court has broad discretion to admit or exclude evidence. Laughner v. State, 769 N.E.2d 1147, 1159 (Ind. Ct. App.

2002). An abuse of discretion occurs when the evidentiary ruling is clearly against the logics, facts, and circumstances presented. Id. We will not reverse unless the movant's substantial rights were affected. McCarthy, 749 N.E. 2d at 536.

Lindsey objected to Exhibit 19, which was a picture of a plastic bottle with the handwritten words "muratic acid" located on the side. Tr. p. 53. Muratic acid is used in the methamphetamine manufacturing process. Appellant's App. p. 115. Lindsey objected to the exhibit citing hearsay grounds. "Hearsay is a statement, other than one made by declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Ind. Evidence Rule 801(c). Hearsay is inadmissible unless there is a recognized exception. Ind. Evidence Rule 802.

Lindsey contends that the State intended to use the exhibit to prove that the bottle contained muratic acid. Appellant's Br. p. 5. When found, the bottle did not contain liquid, nor did the State test the bottle. Tr. p. 54. The State maintains that the bottle was entered into evidence to prove that someone had written the words on the bottle and left it inside the trailer. Appellee's Br. p. 4.

Assuming for argument's sake that Exhibit 19 is hearsay, any error in its admission is harmless because of the overwhelming evidence—aside from Exhibit 19—of Lindsey's guilt. First, Lindsey admitted to police officers that lithium was "soaking out" in glass jar, tr. p. 25, which implies that Lindsey was manufacturing methamphetamine. Also, there were numerous items found on Lindsey's premises that implicate methamphetamine production: a respirator, respirator mask, different kinds of salt, plastic tubing, coffee filters, electrical tape, plastic turkey baster, and a generator.

Id. at 57-66. All of these items were presented to the jury, along with testimony regarding their use by witnesses familiar with methamphetamine production. Further, the State provided evidence of Lindsey's fingerprints on certain items. Given the significant evidence establishing Lindsey's guilt, we find that the admission of Exhibit 19 was, at most, harmless error.

The judgment of the trial court is affirmed.

VAIDIK, J., and MATHIAS, J., concur.